IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-103

DR. ARTURO RIOS, et al.,

Appellants,

vs.

NOLAN B. JONES, et al.,

Appellees.

Appeal from the Supreme Court of Illinois

MOTION TO DISMISS, OR IN THE ALTERNATIVE TO AFFIRM

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The appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, respectfully move this Honorable Court to dismiss the appeal herein or in the alternative, to affirm the judgment of the Supreme Court of the State of Illinois, on the grounds that the appeal fails to present a substantial question for adjudication and that the question presented is so insubstantial as not to warrant further argument.

OPINION BELOW

The opinion of the Illinois Appellate Court is reported at 25 Ill.App.3d 381 and in 323 N.E.2d 380 and appears in appendix A of appellants' jurisdictional statement.

The opinion of the Illinois Supreme Court is reported at 348 N.E.2d 825 and appears in appendix C of appellants' jurisdictional statement.

JURISDICTION

Jurisdiction to hear this appeal is predicated on 28 U.S.C., §1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. 4, §2.

U.S. Const. amend. XIV.

Ill. Rev. Stat. 1957, ch. 91, par. 14a.

ARGUMENT

I.

ANY FEDERAL QUESTIONS RAISED IN THIS CASE HAVE BEEN EXPLICITLY DECIDED BY THE UNITED STATES SUPREME COURT ADVERSELY TO APPELLANTS, THEREFORE, NO SUBSTANTIAL FEDERAL QUESTION REMAINS.

The arguments raised by the appellants in this appeal fail to present a substantial federal question to this Honorable Court. Implicit in appellants' argument is the contention that civil service employment acts as a bar to the legitimate exercise of the police power in the regulation of the practice of medicine. Such a contention is totally unreasonable in light of the time honored precedents enunciated by this Court in *Dent* v. *West Virginia*, 129 U.S. 114, 32 L.Ed. 623 (1889), and its progeny.

A.

Plaintiffs' License to Practice Medicine Is Subject to Regulation by the State's Police Powers.

Although each individual is guaranteed the right to pursue the calling of his choice there is no impairment of this right when its exercise is regulated by conditions imposed by the state for the protection of society. In *Dent* v. *West Virginia*, 129 U.S. 114, 32 L.Ed. 623 (1889) this Court said:

> The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and

incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation. 32 L.Ed. at 626.

As long as the regulations imposed by the state have a real and substantial relation to the object sought to be obtained by the state, the action is lawfully within the parameters of the police power. Obviously, there is nothing more rationally connected to the licensure of physicians than an examination of their fitness and capacity to practice medicine. Thus, in *Dent* v. *West Virginia,* this Court upheld a state statute requiring every medical practitioner to obtain a certificate from the state board of health that he was a graduate of a reputable medical college, or had practiced medicine for at least 10 years, or had been found qualified to practice on examination of the board. This Court found these requirements rationally related to the practice of medicine and attainable "by reasonable study or application." 32 L.Ed. at 626.

In *Douglas* v. *Noble,* 261 U.S. 165, 67 L.Ed. 590 (1923), it was found that the determination of the subjects about which one must have knowledge in order to be fit to practice dentistry; the extent of knowledge required in each subject; the necessary degree of skill and the procedures instituted to conduct an examination of such skills were all proper subjects of police power regulations and, therefore, the administration of these standards could lawfully be delegated to an administrative body.

A statute prohibiting the practice of dentistry without a diploma from a dental college of good standing was upheld in *Graves* v. *Minnesota,* 272 U.S. 425, 71 L.Ed. 331 (1926). The state's regulatory statute was valid because "[c]learly the fact that an applicant for a license holds a diploma from a reputable dental college has a direct and substantial relation to his qualification to practice dentistry." 71 L.Ed. at 335.

The appellants herein have offered no arguments to dispute the reasonable relationship between their fitness and capacity as practitioners and the examination required by section 13a of the Illinois Medical Practice Act. Neither have they shown a substantial reason to deviate from the precedents recited above. Since no procedures exist for a complete evaluation and accreditation of foreign medical schools, graduates of these schools must be evaluated thoroughly in terms of their individual capacity to practice medicine. This can be accomplished by an exacting licensure examination. The enactment of section 13a requiring graduates of foreign medical schools who hold hospital permits to practice in Illinois State Hospitals to submit to a licensure examination, is clearly a reasonable exercise of the State's police power.

B.

Plaintiffs' Property Interest in Continued Civil Service Employment Is Subject to Reasonable Exercise of the State's Police Power.

The argument put forth by the appellants that civil service status is a property right which cannot be subjected to police power regulation is totally without merit. Although a tenured civil service position has been denominated a liberty and property right (*Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548 (1972)) neither the due process clause nor the equal protection clause render this status inviolable; they merely protect the status from arbitrary and unreasonable interference by the state. As stated in *Nebbia* v. *New York,* 291 U.S. 502, 78 L.Ed. 940 (1934):

> Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. 78 L.Ed. at 948-49.

It is established law that all contracts and property rights are subject to the fair exercise of the state's police power. Although the exercise of this power may pose a heavier burden on some individuals than others, as long as the manner of regulation chosen is not arbitrary the constitutional rights of the affected individuals are not violated. As stated by this court in *Barbier* v. *Connolly,* 113 U.S. 27, 28 L.Ed. 923 (1885):

> But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its "police power," to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits, for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good. 28 L.Ed. at 925.

Thus, even though both the right to practice medicine and the maintenance of civil service status are property rights which are constitutionally protected these rights are both subject to limitation by a reasonable exercise of the state's police power. The fact that one individual may hold both entitlements does not change the state's power to regulate either.

As illustrated by *Dent* v. *West Virginia,* and numerous other cases the regulation of the practice of medicine is clearly a proper exercise of the police power. This appeal fails to raise any question which does not fall within the law previously enunciated by this Court. The appellants do not claim that section 13a has no relationship to the legitimate exercise of the police power, nor do they claim that the subject matter of the examination is unreasonable

or unfair. They fail to present any question other than the power of the state to subject licensed practitioners to an examination of their skills and this question has long been answered adversely to them by this Honorable Court.

II.

PLAINTIFFS ARE ACCORDED DUE PROCESS WHERE CONTINUED CIVIL SERVICE STATUS IS CONDITIONAL UPON PASSAGE OF AN EXAMINATION RATIONALLY CONNECTED TO THEIR FITNESS AND CAPACITY AS PRACTITIONERS.

The appellants challenge the validity of section 13a of the Illinois Medical Practice Act which conditions the renewal of a permit to practice medicine in state hospital facilities upon the passage of a medical exam. The gist of the argument is that the additional examination requirement denies due process to those physicians practicing under a hospital permit prior to the passage of the examination provisio

The power of a state to make reasonable provisions for determining the qualifications of those engaging in the practice of medicine, and punishing those who attempt to engage therein in defiance of such statutory provisions, is not open to question. *Reetz* v. *Michigan,* 188 U.S. 505, 47 L.Ed. 563 (1903). *See also In re Campbell,* 197 Pa. 582, 47 A. 860 (1901); *Parks* v. *State,* 159 Ind. 217, 64 N.E. 862 (1902); *State* v. *Currens,* 111 Wis. 433, 87 N.W. 561 (1901); *Laughney* v. *Maybury,* 145 Wash. 146, 259 P. 17 (1927); *People* v. *Hasbrouck,* 11 Utah 306, 39 P. 918 (1895); *State* v. *Carey,* 4 Wash. 424, 30 P. 729 (1892); *Craig* v. *Board of Medical Examiners,* 12 Mont. 208, 29 S.W. 532 (1892); *Driscoll* v. *Com.,* 93 Ky. 393, 20 S.W. 431 (1892); *People*

v. *Apfelbaum,* 251 Ill. 18 (1911). As long as the regulatory means chosen by the state have a real and substantial relation to the public health, comfort, safety or welfare those means must be upheld by the courts. *Atlantic Coast Line R. Co.* v. *Goldsboro,* 232 U.S. 548, 58 L.Ed. 721 (1914).

In order to test the constitutional validity of a statute that regulates the licensing of professionals, this Court has repeatedly employed the "rational relationship" test. *Dent* v. *West Virginia,* 129 U.S. 114, 32 L.Ed. 623 (1889); *Douglas* v. *Noble,* 261 U.S. 165, 67 L.Ed. 590 (1923); *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 1 L.Ed.2d 796 (1957); *Konigsberg* v. *State Bar of California,* 353 U.S. 252, 1 L. Ed.2d 810 (1957). As long as the statute in question has a rational connection to the professionals' fitness or capacity as practitioners the due process guarantees of the fourteenth amendment are satisfied.

Here, section 13a requires physicians practicing under hospital permits to take an examination demonstrating medical competence. The examination requirement is an attempt to provide patients in state hospital facilities with proper medical care by insuring the competence of the physicians practicing therein. The appellees respectfully submit that the requirement that holders of hospital permits pass a preliminary exam as a condition precedent to renewal of their permits is reasonable for several reasons.

First, the appellants were originally licensed and are now licensed under much lower requirements than are demanded of any other physician in the State of Illinois. Secondly, section 13a makes renewal of that permit contingent upon the passage of an examination, but it does not automatically terminate appellants' right to practice medicine nor deprive them of a livelihood. Since no challenges have

been directed against the format or content of the examination itself, it must be assumed that passage of the examination could be had with a reasonable amount of study or preparation.

Lastly, the fact that all appellants are graduates of foreign medical schools is an important consideration in the evaluation of section 13a. Although one of the conditions precedent to the initial issuance of the hospital permits now held by the appellants was a determination that applicant was a graduate of a medical school which was "reputable and in good standing," this initial approval was for purposes of issuing a limited permit only. It does not amount to an official accreditation of these foreign medical schools for, in fact, no uniform procedure for evaluating and accrediting foreign medical schools exists. Forgotson, *Licensure of Physicians, Wash. U.L.Q.* 249 (1967). Each graduate of a foreign medical school must be evaluated individually and thoroughly in terms of his individual competence to practice medicine. It is incumbent upon the state to provide a method for examining the applicant's level of competence and to set the standards of competence which will be required in order to obtain a license to practice within the state.

As recognized by this Court in *Dent* v. *West Virginia*:

> It is only when they [requirements] have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation. 32 L.Ed. at 626.

Thus, in *Dent* this court found that the requirement of graduation from a reputable medical college or passage of an examination by the Board complied with due process stand-

ards. Statutes that condition licensure on graduation from a reputable school (*Hackin* v. *Lockwood,* 361 F.2d 499 (9th Cir. 1966)); payment of fees (*Ayers* v. *Hadaway,* 303 Mich. 589, 6 N.W.2d 905 (1942)); and proof of good character (*Chaney* v. *State Bar of California,* 386 F.2d 962 (9th Cir. 1967)) have been upheld in the face of due process challenges.

Section 13a meets the rational relationship test of the due process clause in that it seeks to insure that foreign trained physicians are competent to perform medical services at a time of rapid advancement in all fields of medicine. It gives these physicians the opportunity to renew their hospital permits upon passage of an examination designed to test their skill and competence. The examination can successfully be completed by a reasonable amount of study or preparation. Section 13a in no way inhibits a foreign trained physician from pursuing a course of study or examination which would allow him to obtain full licensure to practice in the State of Illinois.

III.

THE MEDICAL PRACTICE ACT IS NOT DISCRIMINATORY.

A.

The Statute Applies Uniformly to Both Naturalized Citizens and Other Citizens of Illinois.

The fact that the appellants herein all received their medical training at foreign medical schools in no way indicates that section 13a discriminate against naturalized citizens. The appellants' contention that section 13a imposes arbitrary standards on foreign trained physicians ignores the fact that foreign trained physicians need not

necessarily be naturalized American citizens. The additional examination requirement is mandated by the nature of the educational training received by the licensee, not by the nature of the licensee's national origin.

Although the appellants contend that section 13a is in violation of the privileges and immunities clause, this clause is clearly inapplicable to the situation before this Court. The purpose of section 2 of Article 4, cited by appellants as the basis for the alleged privileges and immunities violation, is to prevent a state from discriminating against citizens of other states in favor of their own citizens. *Hague* v. *CIO,* 307 U.S. 496, 83 L.Ed. 1423 (1939). In the instant case all parties are citizens of the State of Illinois. Section 13a does not involve classifications based on citizenship and, therefore, cannot even remotely involve Art. 4, §2.

Any citizen of Illinois, trained to practice medicine in a foreign country, would be required under section 13a to pass a preliminary examination prior to receiving a permit to practice in Illinois state hospitals. That American-born citizens would seek medical training outside the United States is not an unlikely proposition in light of today's enormous competition for entrance into American medical schools. Regardless of the applicant's origin, section 13a applies uniformly. As has been mentioned before, no reliable method for evaluating and accrediting foreign medical schools exists. The method of licensing in other countries is not substantially equivalent to the requirements for a full license to practice in Illinois, however, one way the state can insure that only competent physicians hold permits to practice is by submitting the applicants to an examination of their skills. All foreign physicians are encour-

aged by the Department of Registration and Education to take the exam for a full license at the earliest opportunity. In the past, applicants for renewal of hospital permits were required to state the manner in which they were pursuing a course of study leading to successfully passing the exam for a full license. P. A. 77-2757, and its legislative antecedents, also specifically provide "a state hospital permit may be revoked by the Department at any time after the holder thereof becomes qualified for a regular license to practice medicine according to the terms of this Act." There is no discrimination against naturalized citizens because the Medical Practice Act applies in an impartial, uniform manner.

B.

Licensing Standards Based on Education and Training Are Consistent with the Fourteenth Amendment.

Section 13a does not deny the appellants equal protection of the law. The equal protection clause of the fourteenth amendment does not prevent the enactment of laws designed to guarantee the public health, safety, welfare and morals. A state may prescribe regulations founded on nature, reason and experience and may, to that end, create legislative classifications that are reasonably calculated to promote the public welfare. Regulating the licensing of qualified persons to professions demanding special skill is a valid public purpose.

In examining the validity of a licensing statute for purposes of an equal protection challenge this Court has consistently applied the "rational basis" test. *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 1 L.Ed.2d 796 (1957). If the classification in question is not arbitrary or unreason-

able and is based on distinctions rationally related to the purpose which the statute is intended to serve, the statute will be upheld. *City of Chicago* v. *Vokes,* 28 Ill.2d 475, 193 N.E.2d 40 (1964). Distinctions based on education and training have repeatedly been held to have a rational basis. *Watson* v. *Maryland,* 218 U.S. 173, 54 L.Ed. 987 (1910); *Crane* v. *Johnson,* 242 U.S. 339, 61 L.Ed. 348 (1917).

In *Watson* v. *Maryland,* this Court upheld a statute which exempted from its requirements physicians who had practiced prior to a certain date and were able to show that they had treated at least 12 persons in a professional way within a year of that date. The Court held that "[t]he selection of the exempted classes was within the legislative power, subject only to the restriction that it not be arbitrary or oppressive, and apply equally to all persons similarly situated." 54 L.Ed. at 990.

A statute requiring drugless practitioners to complete a specific course of study and pass an examination, which statute exempted those who professed to heal by prayer but not faith healers, did not violate equal protection guarantees. *Crane* v. *Johnson,* 242 U.S. 339, 61 L.Ed 348 (1917).

In *Henington* v. *State Board of Bar Examiners,* 60 N.M. 393, 291 P.2d 1108 (1956) a rule prohibiting admission to the state bar to other than graduates of A.B.A. approved law schools was found not to be a denial of equal protection. Statutes requiring special examination of chiropractors, (*Ellestad* v. *Swayze,* 15 Wash. 2d 281, 130 P.2d 349 (1942)) and licensing only upon presentation of a diploma from an "approved" medical school, (*Louisiana State Board of Medical Examiners* v. *Booth,* 76 So.2d 15 (1954)) have met constitutional requirements.

The classification of foreign trained physicians created by section 13a is rationally related to the state's purpose of insuring the quality of medical care provided in state hospitals. The statute applies equally to all persons within that class and, therefore, is neither discriminatory nor a denial of equal protection.

CONCLUSION

For all these reasons, appellees respectfully submit that the present appeal does not present a substantial federal question, and that the federal constitutional questions raised are moot. Appellees, therefore respectfully move this Honorable Court to dismiss this appeal or in the alternative, to affirm the judgment entered by the Illinois Supreme Court.

Respectfully submitted,

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